

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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**AFFIDAVIT IN SUPPORT OF  
MOTION FOR AN ORDER  
DIRECTING TURNOVER**

In Re:

THE COOKIE FACTORY, LLC,  
  
Debtor

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Case No. 24-11002

Marc S. Ehrlich, Esq., being duly sworn deposes and says:

1. I am the Chapter 7 Trustee in the above-referenced case. I am making this Affidavit in support of my Motion as Trustee for an Order seeking Turnover of certain assets in the possession, custody, and/or control of The Cookie Factory, LLC.
2. On September 10, 2024, The Cookie Factory, LLC filed a Chapter 7 petition. At the time of the filing, The Cookie Factory, LLC was operating a commercial and retail bakery business out of two locations: 41-61 River Street, Troy, New York and 520 Congress Street, Troy, New York.
3. The section 341 examination occurred on November 12, 2024. It has been adjourned to December 10, 2024 for production of certain documents.

**BACKGROUND**

4. The Cookie Factory, LLC (hereinafter referred to as “debtor”) has claimed in documents provided to the Trustee and in representations to this Court that on or about May 18, 2023, debtor’s rights to use the name and trademark of The Cookie Factory, LLC and Cookie

Factory were terminated. The underlying licensing rights are allegedly owned by CHMIALB, LLC and JJALB, LLC who terminated same through a Notice of Termination of Exclusive Trademark License. A copy of the Notice of Termination of Exclusive Trademark License is attached to this Affidavit.

5. On May 16, 2023, CHMIALB, LLC and JJALB, LLC entered into an Exclusive Trademark License Agreement with 3 Partners Pastries, LLC. which gave 3 Partners Pastries, LLC the exclusive rights to use the name and trademark of The Cookie Factory, LLC and Cookie Factory. A copy of the Exclusive Trademark License Agreement is attached to this Affidavit.
6. The Cookie Factory, LLC, 3 Partners Pastries, LLC, CHMIAABL, LLC and JJALB, LLC are all owned by either Christopher M. Alberino and Joseph A. Alberino, III, jointly or individually.
7. Also, on May 16, 2023, debtor allegedly transferred the ownership of all of its bakery equipment and tangible personal property to its principals Joseph A. Alberino, III and Christopher M. Alberino, in exchange for forgiveness of debt allegedly owned by debtor to its principals in the amount of Five Hundred Fifty Three Thousand Six Hundred Dollars (\$553,600.00). A copy of the Loan Repayment Transfer Agreement is attached to this Affidavit.
8. The principals then, in turn, transferred the same bakery equipment and tangible personal property to 3 Partners Pastries, LLC, an entity owned either directly or through wholly owned entities owned by Joseph A. Alberino, III and Christopher M. Alberino.
9. On November 12, 2024, the Trustee questioned Christopher M. Alberino at the section 341 meeting regarding the \$553,600.00 in loans which he and his brother allegedly made to the

debtor. Christopher M. Alberino was unable to provide any detail as to when and how much was loaned, as well as the loan terms. He testified that there were no loan documents.

10. One of the statutory duties of a Chapter 7 Trustee is to investigate potential asset transfers to determine whether a debtor received less than a reasonably equivalent value in exchange for any transfer, occurring within the applicable look back period. See 11 U.S.C. Section 548. Such an inquiry is a statutory duty of a Trustee, pursuant to 11 U.S.C. Section 704.

### **RELIEF SOUGHT**

11. In order to substantiate whether or not whether the asset transfers and the termination of the licensing rights rendered The Cookie Factory, LLC insolvent, the Trustee needs certain items and documents.
12. With these documents, the Trustee should be able to ascertain whether these transfers were made for commercially reasonable value.
13. I am seeking turnover of the following items and documents from The Cookie Factory, LLC, pursuant to 11 U.S.C. Section 542:
  - a. Copy of all loan documents and repayment histories with source of funds for all loans made by Joseph A. Alberino, III and Christopher M. Alberino to The Cookie Factory, LLC;
  - b. Copy of all deposited records showing all funds deposited into the account(s) of The Cookie Factory, LLC which were received from Joseph A. Alberino, III and Christopher M. Alberino, which constitutes the \$553,600.00 consideration in the form of forgiven debt;
  - c. Copy of all assets appraisal used by the parties to value the personal property

transferred by The Cookie Factory, LLC to its principals, in May of 2023;

- d. All financial books and records;
- e. All corporate books and records, including Minutes of all Member Meetings, Membership Agreements, Operating Agreements, Memos, Notes, Correspondence, etc. pertaining to all Corporate Actions including but not limited to Loans Received, Intellectual Property, and the Use of the name “The Cookie Factory.”;
- f. All documents related to all litigation in which debtor was a defendant including, but not limited to, all reports, correspondence, notes, drafts, agreements, etc. within the last six (6) years;
- g. Computer and Computer server with passwords to all programs;
- h. Copy of Quickbooks file with passwords;
- i. Copy of Bulk Sales Notice for asset transfers filed with New York State;
- j. Proof of all payments made by The Cookie Factory, LLC to either JJALB, LLC and/or CHMIALB, LLC for the rights to use the name and trademark of The Cookie Factory, LLC and Cookie Factory from May 1, 2021 to present;
- k. All books and records related to debtor’s transactions with Maverick Ventures, LLC and/or Maverick Cookies, LLC or any similar derivation or name;
- l. Record of all payments made to and/or received from Maverick Ventures, LLC and/or Maverick Cookies, LLC or any similar derivation of name within the last six (6) years;
- m. Copy of all lease agreements between Fratello’s Holdings, LLC and The

Cookie Factory, LLC; and

- n. Record of all payments made to and/or received from Fratello Holdings, LLC within the last six (6) years

14. I am seeking the entry of an Order directing debtor, through its principals Joseph A. Alberino, III and Christopher M. Alberino to produce and deliver to the Trustee the requested items and documents. I am requesting that the requested items and documents be turned over to the Trustee within fourteen (14) days of the entry of an Order directing turnover of the records sought herein.

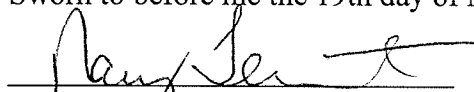
15. No prior Motion seeking this relief has been made by me in this case.

WHEREFORE, your deponent respectfully requests that an Order be issued approving the turnover of the assets as set forth above.



Marc S. Ehrlich

Sworn to before me the 19th day of November , 2024



Notary Public  
My Commission Expires  
NANCY TERNENT  
Notary Public, State of New York  
No. 4668182  
Qualified in Albany County  
Commission Expires 12/31/26